

EXHIBIT D

OMNIBUS BROWN DECLARATION

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION)
) No. 11-CV-2509-LHK
THIS DOCUMENT RELATES TO:)
ALL ACTIONS.)
_____)

ATTORNEYS' EYES ONLY
VIDEO DEPOSITION OF LAUREN STIROH, Ph.D.
December 9, 2013

REPORTED BY: GINA V. CARBONE, CSR NO. 8249, RMR, CCRR

10:04:36 1 that I have in my report is that the -- that having a
10:04:40 2 conduct variable that turns off at the start time and
10:04:42 3 then turns off at the end time is going to sweep into it
10:04:46 4 anything that's not adequately controlled for elsewhere
10:04:50 5 in the report -- in the analysis.

10:04:52 6 And to the extent that there is an overlap in
10:04:56 7 the periods of the agreement, so even assuming that the
10:04:59 8 agreements have an impact, that the impact could be
10:05:03 9 measurable and the impact is to lead to
10:05:05 10 undercompensation of the class, if all of that is true,
10:05:08 11 and you have two agreements that have an overlap in
10:05:11 12 period, then there is nothing in the analysis that tells
10:05:13 13 you what of that measured undercompensation comes from
10:05:17 14 the one at issue versus one that was concurrent with the
10:05:20 15 one at issue, even if the concurrency was for a part but
10:05:24 16 not all of the time.

10:05:26 17 MR. GLACKIN: Q. When you say the
10:05:27 18 agreements have an overlap, are you saying this
10:05:30 19 problem arises if there is any overlap at all
10:05:33 20 between the time periods of the agreements?

10:05:38 21 A. If the theory is correct, that there is an
10:05:41 22 impact on undercompensation from the nature of the
10:05:45 23 agreement, and there is a period of overlap, then the
10:05:47 24 model has no way to distinguish what part of that
10:05:50 25 undercompensation comes from the agreement that we're

10:05:52 1 trying to measure the effect of, and what comes from the
10:05:54 2 agreement that we are not trying to measure the effect
10:05:56 3 of.

10:05:57 4 Q. So let's call -- I'm going to refer to those
10:05:59 5 agreements as the agreements were not trying to measure
10:06:03 6 the effect as lawful agreements.

10:06:09 7 (Reporter clarification.)

10:06:09 8 THE WITNESS: Okay.

10:06:09 9 MR. GLACKIN: Q. Suppose you had a lawful
10:06:10 10 agreement that began in 1995 and continued up to the
10:06:13 11 present day; why would the regression analysis, as
10:06:19 12 it is constructed, fail to control for the existence
10:06:22 13 of that agreement?

10:06:24 14 MR. KIERNAN: Object to form.

10:06:32 15 THE WITNESS: I think that -- I would want to
10:06:37 16 look a little bit further to see what the nature of the
10:06:39 17 agreement was specifically, and who the two parties were
10:06:44 18 to the agreement. But just on the hypothetical, an
10:06:47 19 agreement that spans the entirety of the period, then if
10:06:51 20 there is an impact on undercompensation from the
10:06:54 21 agreement, it's not necessarily going to be uniform
10:06:56 22 throughout the entire period.

10:06:58 23 And because there are not sufficient controls
10:07:01 24 during what we're calling the damage period, 2005 to
10:07:07 25 2009, and there are events within that damage period,

10:07:11 1 undercompensation that should be connected to the lawful
10:07:14 2 agreement can be wrapped up in undercompensation that is
10:07:17 3 coming from the -- from the recession or other
10:07:21 4 compensation events at the defendants that happened
10:07:23 5 inside the damage period and not under the -- outside
10:07:25 6 the damage period.

10:07:27 7 They're being swept into compensation where it
10:07:29 8 should be that they are really attributed to different
10:07:32 9 causes. And if one of those causes is a lawful
10:07:35 10 agreement, even if it spans the entirety of the period,
10:07:38 11 could still be swept into damages.

10:07:40 12 MR. GLACKIN: Q. Is it your opinion that
10:07:41 13 that actually happened with respect to any of these
10:07:44 14 four lawful agreements that you've identified here?

10:07:48 15 MR. KIERNAN: Object to form.

10:07:50 16 THE WITNESS: As I sit here, I don't recall
10:07:52 17 what the dates were and whether they, all or any of
10:07:54 18 them, span 1995 through 2011, but it is my general
10:07:58 19 opinion that what is being picked up by Dr. Leamer's
10:08:01 20 conduct variable includes more events than certainly the
10:08:04 21 conduct that we're trying to measure at issue. And I've
10:08:06 22 given you an example of how one of those agreements may
10:08:08 23 be infecting the analyses.

10:08:11 24 MR. GLACKIN: Q. So what I'm asking is, is
10:08:13 25 it your affirmative opinion that any one of these

10:08:19 1 four lawful agreements that you've listed here, in
10:08:23 2 fact, did cause undercompensation that was swept in,
10:08:27 3 as you've put it, into the damages calculation of
10:08:30 4 Dr. Leamer?

10:08:31 5 MR. KIERNAN: Object to form.

10:08:32 6 THE WITNESS: It is not. My opinion is that
10:08:35 7 under the theories put forward by plaintiffs, that these
10:08:38 8 agreements, each one of them, regardless of terms,
10:08:41 9 length and the nature of the two parties affects
10:08:45 10 undercompensation, then it is a necessary thing
10:08:47 11 consistent with that theory to carve out the impact of
10:08:50 12 the lawful agreements from the alleged impact of the
10:08:52 13 challenged agreements.

10:08:54 14 MR. GLACKIN: Q. You understand that -- or
10:08:55 15 you believe that the terms of the agreements are
10:08:57 16 irrelevant to the plaintiffs' theory of impact?

10:09:03 17 MR. KIERNAN: Object to form.

10:09:10 18 THE WITNESS: I think that the question is
10:09:12 19 combining a couple of different things. The terms of
10:09:15 20 the agreements are not necessarily irrelevant to the
10:09:18 21 plaintiffs' theory of impact. I think they reference
10:09:21 22 the various terms of the agreement in the complaint.
10:09:23 23 Specifically, though, Dr. Leamer has not made any
10:09:27 24 adjustments for variation in terms, agreement to
10:09:29 25 agreement, he treats them identically.

1 I, Gina V. Carbone, Certified Shorthand
2 Reporter licensed in the State of California, License
3 No. 8249, hereby certify that the deponent was by me
4 first duly sworn and the foregoing testimony was
5 reported by me and was thereafter transcribed with
6 computer-aided transcription; that the foregoing is a
7 full, complete, and true record of said proceedings.

8 I further certify that I am not of counsel or
9 attorney for either of any of the parties in the
10 foregoing proceeding and caption named or in any way
11 interested in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of the
13 original transcript will render the reporter's
14 certificates null and void.

15 In witness whereof, I have hereunto set my hand
16 this day: December 16, 2013.

17 X Reading and Signing was requested.

18 Reading and Signing was waived.

19 Reading and signing was not requested.

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GINA V. CARBONE

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CSR 8249, RMR, CRR, CCRR

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